

DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA



March 2, 2004

DIVISION OF
LAND RESOURCE
PROTECTION

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Mr. David McKay, Conservation Planning Team Leader
Conservation Operations Division
Natural Resources Conservation Service
P.O. Box 2890
Washington D.C. 20013-2890

Dear Mr. McKay:

The California Department of Conservation's (Department) Division of Land Resource Protection has reviewed the proposed rulemaking prepared for the Conservation Security Program. The Farm Security and Rural Investment Act of 2002 amended the Food Security Act of 1985 to authorize the Conservation Security Program (CSP) Administered by the Natural Resource Conservation Service (NRCS). The CSP is a voluntary program that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy and other conservation purposes on private working land and Tribal lands. These lands include cropland, grassland, prairie land improved pasture and rangeland, as well as forested land and other non-cropped areas that are an incidental part of an agricultural operation. USDA's NRCS intends that the CSP program will recognize those farmers and ranchers, land stewards meeting the highest standards of conservation and environmental management.

We respectfully offer the following comments and questions, and ask that they be considered when finalizing the regulations. We offer several overarching program comments as well as regulation-specific comments. Our comments follow:

It is important to commence the CSP on a clear trajectory to become available to all California ranchers and farmers, as well as producers in other states that practice effective conservation. CSP has the potential to provide appropriate rewards to producers who are protecting the environment and effective incentives to others who want to do better only if it expands into a program with sufficient scale and payments adequate to attract many participants controlling a substantial acreage. A small program with meager payments may not be effective. If the program is launched with pilot projects in selected watersheds, they should be specifically designed to test alternative implementation approaches that

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can be incorporated promptly into an expanded nationwide program. Rules for selecting watersheds where these early pilot projects would occur should be (1) available for review and comment, (2) ensure that these watersheds include a representative cross section of geographic areas and differing crop and livestock production, including vineyards, orchards, and irrigated field crops as well as traditional commodities, and (3) target areas where producers past practices, participation in watershed planning, or degree of organization indicates they are prepared to participate in significant numbers in these early plot projects.

It is important to provide meaningful incentives. Using regional and local land rental data is appropriate, fairly reflecting varying farmland values between and within states. Base payments, however, should be increased to provide more adequate compensation for conservation practices. In addition, payments should be more fairly distributed across all three tiers, rather than concentrated on the best Tier III producers, in order to provide better incentives for producers to steadily improve practices. Cost share payments should be structured to encourage full use of other farm conservation programs (EQIP, WHIP, CRP, ERP, etc.), rather than using CSP as an alternative mechanism to fund activities eligible for these other programs. Payments should reward long-term conservation commitments by allowing producers to renew contracts, rather than limiting them to a single five-year contract.

Fair and consistent treatment of grazing land and timberland owners and tenants is also important. Many California farms and ranches include mixes of cultivated lands, grazing lands, and timber or chaparral. Grazing lands should be treated more fairly by determining base payments based on land capability, rather than use. When these lands are retained in permanent cover rather than converted to vineyards or orchards, conservation benefits are significant. These producers should not be penalized for foregoing more valuable but more damaging uses of their lands. Owners whose operations include forests or chaparral should be eligible for participation in both Tier I and Tier II of the program without fully addressing conservation standards on these lands, in order to provide adequate incentives to encourage conservation on cultivated and grazing lands, without demanding costly but uncompensated improvements on lands ineligible for base payments or cost share.

Many California operations also mix lands owned and rented, with a variety of tenures. Producers should not be penalized for any inability to provide ten-year commitments to carry out conservation practices on rented land. Instead, state conservationists should be allowed discretion to enroll those portions of an operation where long-term commitments can be provided, while excluding rented lands, where conservation benefits warrant.

As the CSP is presented, relevancy of resource concerns and all eligible practices are not identified. Water quality is a significant resource concern in almost all of California,

but for many producers wildlife, especially endangered species, air quality, and water or energy conservation are more pressing concerns than soil quality, where California growers often find salinity management more pressing than improvements in organic matter. To recognize this variety of resource concerns, conservation resource concern priorities should be set at the state level, so the program can be as responsive as possible to concerns in each region. The full range of approved practices should be considered in CSP conservation plans and systems, not just a limited number as proposed in the draft rule.

Continuous signups would be more effective than a limited duration. Limited duration CSP signups would be difficult for farmers and ranchers, especially if they occur during planting or growing seasons, and make management of workloads difficult for technical service providers and NRCS staff.

Regulation-specific comments:

Page 22 – A modified process for determining eligibility is discussed. We recommend a locally determined prioritization for ranking of watersheds as well as other resource concerns. For example, under the modified process, the watersheds will be ranked separately in each NRCS administrative region. Allowing more locally-prioritized watersheds is important because there may be a particular watershed that, if improved, would benefit surrounding watersheds, and regionally (and systematically) be of benefit.

It is not clear if the NRCS will field check for accuracy once an application is submitted.

Definitions

Agricultural Operations – For the purposes of this rulemaking, we recommend that the definition for agricultural operation is clarified, made concise and be consistent with the definition of same in other regulatory programs. An agricultural operation may have several meanings and as it is written presently, the definition is nebulous.

Base Component of CSP Payments – this definition refers the reader to section 1470.23. This is confusing to the reader. Upon finding the referred section, a process for determining Program payments is described. Section (iii) states that where consistent local data are not readily available, that the NRCS will use the available data to determine reasonable local rates where feasible. This section is unclear. What precisely does this mean? As the section is presently written, the calculation for determining the CSP payment might be inconsistent from region to region or state to state, depending on interpretation.

Considered to be planted – this definition should be deleted unless further clarified. If the definition is incorporated into the eligibility requirements it may penalize those operators who intentionally fallow their lands to provide habitat for wildlife for short periods of time, which may be in direct conflict with the CSP program's goals.

Add definitions

- The tiers that are referred to in the Act pertain to the payment that would be awarded to the producer. Although the tiers have been explained in workshops, they are not defined in the regulations. For clarity and consistency, the definition for the tiering structure should be incorporated into the rulemaking.
- Section 1470.53(iii) - Eligibility requirements - this section refers to an agricultural operation. The term "agricultural operation" should be clearly and concisely defined.

Section 1470.5 – Eligibility Criteria

One of the eligibility criteria involves selection of priority watersheds. Apparently only those producers within the priority watersheds will be eligible to apply for CSP funds. The watershed prioritization process will consider several factors: vulnerability of surface and groundwater quality, potential for excessive soil quality degradation and the condition of grazing land within a watershed.

Section 1470.5(e) (1) - Selection and Funding of Priority Watersheds.

Again, we recommend a locally determined prioritization for ranking of watersheds as well as other resource concerns. A localized approach to prioritization of watersheds would be important because there may be one particular watershed that, if improved, would benefit surrounding watersheds, and regionally be of benefit.

Subsection (3) states that NRCS will request a public comment on the process used to select the watersheds before the sign-up announcement. We respectfully request that this Department be placed on the contact list for comments. When will this occur?

Section 1470.6. Enrollment Categories

- Who and how is the determination made regarding which tier an applicant is eligible for? Is this determined by the proposed web questionnaire? How do the enrollment categories relate to the tiered payment system?
- Soil quality is included as part of the enrollment categories – degrading soil quality does not automatically infer that there are erosion issues within a watershed – especially in California. Degrading soil quality may mean that salinity is increasing, selenium or metals are accumulating in the soil profile, drainage issues may be present, an area may be prone to flooding, among other aspects.

Section 1470.20 (b) (1). Additional Eligibility Criteria – This section infers that additional eligibility criteria not identified in Section 1470.5 may be forthcoming. We ask that any changes to the criteria be noticed and publicized for public comment prior to finalization.

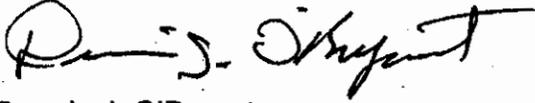
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Thank you for the opportunity to review this important rulemaking. Please do not hesitate to contact Jenny DiStefano at (916) 324-0774 or Jeannie Blakeslee at (916) 323-4943 if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis J. O'Bryant".

Dennis J. O'Bryant
Acting Assistant Director



Schuyler County Soil and Water Conservation District
P.O. Box 290 - Rushville, Illinois 62681 - Phone (217) 322-3359

Mr. David McKay
Attention: Conservation Security Program
Conservation Planning Team Leader
Conservation Operations Division
USDA NRCS
P.O. Box 2890
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Dear Mr. McKay:

We are pleased to submit comments on the proposed rule to implement the 2002 Farm Bill Conservation Security Program.

We have several concerns relative to the proposed rule. We understand that during the development of the proposed rule changes were made to the statute that altered it from an uncapped entitlement program to a "capped entitlement" to be funded at approximately \$3.8 billion over 10 years. Given that change, NRCS proposed a much more limited program that would be available only to a relatively small number of producers in highly targeted watersheds. The proposed rule also placed significantly lower limits on cost-share rates and base payments than were allowed in the statute; restricted the number and types of practices that would be eligible for payment; and required producers to address resource concerns prior to enrolling in the program.

The enactment of the 2004 Consolidated Appropriations Bill, however, restored the CSP to an uncapped entitlement as it was originally written. Given that fact, we strongly urge NRCS to prepare a rule to implement the program as originally intended. The principal issues that need to be addressed in the supplement to properly implement the CSP as an uncapped entitlement include:

- allowing open enrollment to all eligible producers nationwide with no preference for producers in targeted watersheds;
- providing the full cost-share, maintenance and base payments as provided for in the statute;
- removing the limitation on the types of practices eligible for payment; and
- making the CSP a true rewards program by allowing producers to use CSP to address resource concerns after enrollment.
- Make payments to producer or producers with risk in crop or livestock in operation
- Set rental rates on a district by district basis' through a local working group with final OK by state committee

Thank you for allowing us this opportunity to comment.

Sincerely

Robert H Teel, Chairman
Schuyler County Soil & Water Conservation District